

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

U.S. DISTRICT COURT
FILED AT WHEELING, WV
MAR - 2 2009
NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

MARK RILEY,

Plaintiff,

v.

Civil Action No. 5:08cv130
(Judge Stamp)

DAVID BALLARD, WILLIAM WEST,
PAUL PARRY, TIM WHITTINGTON
AND JANET ELLIOT,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

On this day, the above-styled matter came before the Court for consideration of the plaintiff Mark Riley's, civil rights complaint. A review of the file shows that the plaintiff initiated this case on August 18, 2008. Because the plaintiff had not paid the required filing fee, or filed a request to proceed as a pauper at that time, the Clerk sent the plaintiff a Notice of Deficient pleading advising him to pay the required filing fee or file a request to proceed as a pauper within twenty (10) days. When the plaintiff failed to comply with that order, Magistrate Judge David J. Joel issued an Order to show cause why the cause should not be dismissed for the failure to prosecute. On November 19, 2008, the plaintiff filed a motion for leave to proceed in forma pauperis, a Consent to Collection of Fees form and a Prisoner Trust Account Report.

Upon a review a those forms on November 20, 2008, Magistrate Judge Joel found that the ledger sheets to the plaintiff's inmate account covered only a three month period prior to the filing of this case. However, by statute, in making an in forma pauperis determination, the Court is required to examine the transactions in the plaintiff's inmate account for the six-months preceding

the filing of the action. See 28 U.S.C. § 1915(a)(2). Therefore, Magistrate Judge Joel directed the plaintiff to file updated ledger sheets within twenty (20) days of the date of the Order. When the plaintiff failed to comply with that Order, on January 27, 2009, Magistrate Judge Joel issued a second order directing the plaintiff to show cause why his case should not be dismissed for the failure to prosecute. To date, the plaintiff has not complied with that Order, has not requested an extension of time do so, or otherwise explained his reasons for noncompliance.

Accordingly, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, the Court hereby DISMISSES without prejudice, the plaintiff's complaint [dckt. 1] for the failure to prosecute, and ORDERS it STRICKEN from the active docket of this Court. Should the petitioner choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit, he is ADVISED that he must file a notice of appeal with the Clerk of this Court within 30 days after the date of the entry of the judgment order.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the plaintiff and counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: March ~~February~~ 2, 2009

Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE